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90 DEGREE BENEFITS, INC., a Wisconsin foreign stock corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PIH HEALTH HOSPITAL –
WHITTIER, a California non-profit
public benefit corporation; and PIH
HEALTH HOSPITAL – DOWNEY, a
California non-profit public benefit
corporation

Plaintiff,

v.

90 DEGREE BENEFITS, INC., a

Case No. **2:22-cv-08707-MEMF-SK**

**[Assigned to Hon. Maame Ewusi-
Mensah Frimpong]**

STIPULATED PROTECTIVE
ORDER

Trial: June 17, 2024

1 Wisconsin foreign stock corporation;
2 and DOES 1 THROUGH 25,
3 INCLUSIVE,

4 Defendants.

5
6 1. A. PURPOSES AND LIMITATIONS

7
8 Discovery in this action is likely to involve production of confidential,
9 proprietary, or private information for which special protection from public
10 disclosure and from use for any purpose other than prosecuting this litigation may
11 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
12 enter the following Stipulated Protective Order. The parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to
14 discovery and that the protection it affords from public disclosure and use extends
15 only to the limited information or items that are entitled to confidential treatment
16 under the applicable legal principles. The parties further acknowledge, as set forth
17 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective
18 Order does not entitle them to file confidential information under seal; Civil Local
19 Rule 79-5 sets forth the procedures that must be followed and the standards that will
20 be applied when a party seeks permission from the court to file material under seal.

21
22 B. GOOD CAUSE STATEMENT

23 This action is likely to involve trade secrets, customer and pricing lists, and
24 other valuable research, development, commercial, financial, technical and/or
25 proprietary information for which special protection from public disclosure and
26 from use for any purpose other than prosecution of this action is warranted. Such
27 confidential and proprietary materials and information consist of, among other
28 things, confidential business or financial information, information regarding

1 confidential business practices, or other confidential research, development, or
 2 commercial information (including information implicating privacy rights of third
 3 parties), information otherwise generally unavailable to the public, “protected health
 4 information” as such term is defined by the Standards for Privacy of Individually
 5 Identifiable Health Information, 45 C.F.R. part 160.103, promulgated pursuant to
 6 the Health Insurance Portability and Accountability Act (“HIPAA”), as well as any
 7 patient health information protected by state law, and other information which may
 8 be privileged or otherwise protected from disclosure under state or federal statutes,
 9 court rules, case decisions, or common law. Accordingly, to expedite the flow of
 10 information, to facilitate the prompt resolution of disputes over confidentiality of
 11 discovery materials, to adequately protect information the parties are entitled to keep
 12 confidential, to ensure that the parties are permitted reasonable necessary uses of
 13 such material in preparation for and in the conduct of trial, to address their handling
 14 at the end of the litigation, and serve the ends of justice, a protective order for such
 15 information is justified in this matter. It is the intent of the parties that information
 16 will not be designated as confidential for tactical reasons and that nothing be so
 17 designated without a good faith belief that it has been maintained in a confidential,
 18 non-public manner, and there is good cause why it should not be part of the public
 19 record of this case.

20 2. DEFINITIONS

21 2.1 Action: shall refer to the above-captioned matter.

22 2.2 Challenging Party: a Party or Non-Party that challenges the
 23 designation of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 25 how it is generated, stored, or maintained) or tangible things that qualify for
 26 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 27 the Good Cause Statement.

28 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as

1 their support staff).

2 2.5 Designating Party: a Party or Non-Party that designates information
3 or items that it produces in disclosures or in responses to discovery as
4 “CONFIDENTIAL.”

5 2.6 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced
8 or generated in disclosures or responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.8 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association,
16 or other legal entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advise a party to this Action and
19 have appeared in this Action on behalf of that party or are affiliated with a law firm
20 which has appeared on behalf of that party, including support staff.

21 2.11 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium)

1 and their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is
3 designated as "CONFIDENTIAL."

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.

12 Any use of Protected Material at trial shall be governed by the orders of the
13 trial judge. This Order does not govern the use of Protected Material at trial.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees
17 otherwise in writing or a court order otherwise directs. Final disposition shall be
18 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
19 or without prejudice; and (2) final judgment herein after the completion and
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
21 including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23
24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designates information or items for protection under
27 this Order must take care to limit any such designation to specific material that
28 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber the case development process or to impose
8 unnecessary expenses and burdens on other parties) may expose the Designating
9 Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
16 under this Order must be clearly so designated before the material is disclosed or
17 produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
23 contains protected material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the protected
25 portion(s) (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which documents it would like copied and produced. During the

1 inspection and before the designation, all of the material made available for
2 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
3 identified the documents it wants copied and produced, the Producing Party must
4 determine which documents, or portions thereof, qualify for protection under this
5 Order. Then, before producing the specified documents, the Producing Party must
6 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
7 If only a portion or portions of the material on a page qualifies for protection, the
8 Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party identify
11 the Disclosure or Discovery Material on the record, before the close of the
12 deposition all protected testimony.

13 (c) for information produced in some form other than documentary and
14 for any other tangible items, that the Producing Party affix in a prominent place on
15 the exterior of the container or containers in which the information is stored the
16 legend “CONFIDENTIAL.” If only a portion or portions of the information
17 warrants protection, the Producing Party, to the extent practicable, shall identify the
18 protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the Designating Party’s right to secure protection under this Order for such material.
22 Upon timely correction of a designation, the Receiving Party must make reasonable
23 efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

25 26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
28 designation of confidentiality at any time that is consistent with the Court’s

1 Scheduling Order.

2 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
3 resolution process under Civil Local Rule 37-1 et seq.

4 6.3 The burden of persuasion in any such challenge proceeding shall be
5 on the Designating Party. Frivolous challenges, and those made for an improper
6 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
7 parties), may expose the Challenging Party to sanctions. Unless the Designating
8 Party has waived or withdrawn the confidentiality designation, all parties shall
9 continue to afford the material in question the level of protection to which it
10 is entitled under the Producing Party's designation until the Court rules on the
11 challenge.

12
13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that
15 is disclosed or produced by another Party or by a Non-Party in connection with
16 this Action only for prosecuting, defending, or attempting to settle this Action.
17 Such Protected Material may be disclosed only to the categories of persons and
18 under the conditions described in this Order. When the Action has been
19 terminated, a Receiving Party must comply with the provisions of Section 13 below
20 (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at
22 a location and in a secure manner that ensures that access is limited to the
23 persons authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
25 otherwise ordered by the Court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 "CONFIDENTIAL" only to:

28 (a) the Receiving Party's Outside Counsel of Record in this Action, as

1 well as employees of said Outside Counsel of Record to whom it is reasonably
2 necessary to disclose the information for this Action;

3 (b) the officers, directors, and employees (including House Counsel) of
4 the Receiving Party to whom disclosure is reasonably necessary for this Action;

5 (c) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the Court and its personnel;

9 (e) court reporters and their staff;

10 (f) professional jury or trial consultants, mock jurors, and Professional
11 Vendors to whom disclosure is reasonably necessary for this Action and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information;

15 (h) during their depositions, witnesses, and attorneys for witnesses, in
16 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
17 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
18 they will not be permitted to keep any confidential information unless they sign the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
20 agreed by the Designating Party or ordered by the Court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal Protected Material may
22 be separately bound by the court reporter and may not be disclosed to anyone except
23 as permitted under this Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties engaged in settlement discussions.

26
27 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
28 **IN OTHER LITIGATION**

1 If a Party is served with a subpoena or a court order issued in other litigation
2 that compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification
5 shall include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order
7 to issue in the other litigation that some or all of the material covered by the
8 subpoena or order is subject to this Protective Order. Such notification shall include
9 a copy of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be
11 pursued by the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with
13 the subpoena or court order shall not produce any information designated in this
14 action as “CONFIDENTIAL” before a determination by the court from which the
15 subpoena or order issued, unless the Party has obtained the Designating Party’s
16 permission. The Designating Party shall bear the burden and expense of seeking
17 protection in that court of its confidential material, and nothing in these provisions
18 should be construed as authorizing or encouraging a Receiving Party in this Action
19 to disobey a lawful directive from another court.
20

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
22 PRODUCED IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a
24 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
25 produced by Non-Parties in connection with this litigation is protected by the
26 remedies and relief provided by this Order. Nothing in these provisions should be
27 construed as prohibiting a Non-Party from seeking additional protections.

28 (b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is
 2 subject to an agreement with the Non-Party not to produce the Non-Party's
 3 confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party
 5 that some or all of the information requested is subject to a confidentiality agreement
 6 with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Stipulated
 8 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 9 specific description of the information requested; and

10 (3) make the information requested available for inspection by the Non-
 11 Party, if requested.

12 (c) If the Non-Party fails to seek a protective order from this Court within
 13 14 days of receiving the notice and accompanying information, the Receiving Party
 14 may produce the Non-Party's confidential information responsive to the discovery
 15 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
 16 not produce any information in its possession or control that is subject to the
 17 confidentiality agreement with the Non-Party before a determination by the Court.
 18 Absent a court order to the contrary, the Non-Party shall bear the burden and
 19 expense of seeking protection in this Court of its Protected Material.
 20

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 23 Protected Material to any person or in any circumstance not authorized under this
 24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
 27 or persons to whom unauthorized disclosures were made of all the terms of this
 28 Order, and (d) request such person or persons to execute the "Acknowledgment and

1 Agreement to Be Bound” that is attached hereto as Exhibit A.

2
3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
9 procedure may be established in an e-discovery order that provides for production
10 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
11 (e), insofar as the parties reach an agreement on the effect of disclosure of a
12 communication or information covered by the attorney-client privilege or work
13 product protection, the parties may incorporate their agreement in the stipulated
14 protective order submitted to the Court.

15
16 12. MISCELLANEOUS

17 12.1 Right to Relief. Nothing in this Order abridges the right of any person
18 to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order, no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in this
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any
23 ground to use in evidence of any of the material covered by this Protective Order.

24 12.3 Filing Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Civil Local Rule 79-5. Protected Material
26 may only be filed under seal pursuant to a court order authorizing the sealing of the
27 specific Protected Material at issue. If a Party’s request to file Protected Material
28 under seal is denied by the court, then the Receiving Party may file the information

1 in the public record unless otherwise instructed by the court.

2
3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in Section 4
5 (DURATION), within 60 days of a written request by the Designating Party, each
6 Receiving Party must return all Protected Material to the Producing Party or destroy
7 such material. As used in this subdivision, "all Protected Material" includes all
8 copies, abstracts, compilations, summaries, and any other format reproducing or
9 capturing any of the Protected Material. Whether the Protected Material is returned
10 or destroyed, the Receiving Party must submit a written certification to the
11 Producing Party (and, if not the same person or entity, to the Designating Party) by
12 the 60 day deadline that (1) identifies (by category, where appropriate) all the
13 Protected Material that was returned or destroyed; and (2) affirms that the Receiving
14 Party has not retained any copies, abstracts, compilations, summaries, or any other
15 format reproducing or capturing any of the Protected Material. Notwithstanding this
16 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
17 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant
19 and expert work product, even if such materials contain Protected Material. Any
20 such archival copies that contain or constitute Protected Material remain subject to
21 this Protective Order as set forth in Section 4 (DURATION).

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14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

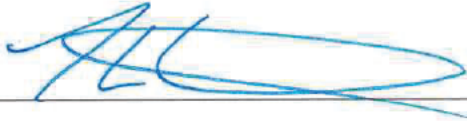
IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED 9/21/2023



Attorneys for Plaintiff

DATED: September 21, 2023



Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: September 22, 2023



Honorable Steve Kim
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of _____ **[insert formal name of the case and the
 number and initials assigned to it by the court]**. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order, and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____